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PROGRAMME OF WORK DURING THE SESSION

QUESTIONNAIRE ON THE ESTABLISHMENT OF A MULTILATERAL CONSULTATIVE PROCESS UNDER ARTICLE 13

Synthesis of responses*

Note by the secretariat

I. INTRODUCTION

1. At its first session, the Ad Hoc Group on Article 13 decided to request Parties, non-parties, and intergovernmental and non-governmental organizations to make written submissions in response to a questionnaire relating to a multilateral consultative process (FCCC/AG13/1995/2, para. 17). The submissions would be compiled and synthesized by the secretariat.

2. Nineteen Parties and one non-party submitted responses: Australia, Bolivia, Burkina Faso, Canada, Chile, China, Czech Republic, the European Community, France, Honduras, Japan, Kuwait, Latvia, Mali, Mexico, Russian Federation, Senegal, Turkey, United Kingdom of Great Britain and Northern Ireland, and Zambia. These submissions were compiled in document FCCC/AG13/1996/MISC.1.

* The present document will be available in all languages for the third session of the AG13.

3. Ten non-governmental organizations (NGOs) submitted responses: Development Alternatives (India), Foundation for International Environmental Law (United Kingdom), Global Climate Coalition (USA), International Institute for Applied Systems Analysis (Austria), Hamburg Institute for Economic Research (Germany), RainForest ReGeneration Institute (USA), Tata Energy Research Institute (India), University of Bradford (United Kingdom), Verification Technology Information Centre (United Kingdom) and Woods Hole Research Center (USA). These submissions were compiled in document FCCC/AG13/1996/MISC.2. No submissions were received from intergovernmental organizations.

4. Both compilations were made available during the sessions of the subsidiary bodies held in February and March 1996. Submissions were received subsequently from Lebanon and from the Wuppertal Institute for Climate, Environment and Energy, and can be found in documents FCCC/AG13/1996/MISC.1/Add.1 and MISC.2/Add.1, respectively.

5. The present document is a synthesis of the above-mentioned submissions. It provides a spectrum of views on the multilateral consultative process and identifies common areas of understanding that seem to be emerging. For ease of reference, it combines submissions from Parties, non-parties and non-governmental organizations in one document. When the views expressed by non-governmental organizations correspond to those of countries, they have been merged. However, views expressed by non-governmental organizations that are not supported by inputs from countries are clearly distinguished.

II. SYNTHESIS OF RESPONSES

Section A. Definition and scope of the process

Question 1(a). What should be understood by the term "multilateral consultative process"?

6. Many submissions defined the term "multilateral consultative process" by the functions it would fulfil. In this regard, four central functions, inter alia, were described: to provide assistance; to address concerns regarding implementation of the Convention; to resolve potential disputes; and to interpret the Convention.

(i) Assistance

The first central function is to assist Parties to implement their commitments under the Convention. Several submissions envisaged the process or a consultative service having access to legal, economic and technical expertise, whereby Parties could obtain advice on preparing national communications, developing climate change mitigation policies, and fulfilling other obligations under the Convention or future protocols.

(ii) Concerns regarding implementation

The second central function is to deal with concerns regarding implementation, for example, situations in which one or more Parties are unwilling or unable to comply with their obligations under the Convention or a future protocol. A Party concerned about its own ability to implement commitments or concerned about the non-compliance of another Party could invoke the process. In the case of a Party experiencing implementation difficulties, that Party could, on its own initiative or in response to the requests of others, engage in consultative discussions with the main body responsible for the multilateral consultative process. A few submissions suggested that the process could be invoked not only by Parties but by the secretariat, the existing subsidiary bodies, and/or the Conference of the Parties (COP). Many submissions saw the process as closely related to the in-depth review process, which effectively reveals the progress towards climate change mitigation achieved by those Parties that are subject to such reviews.

(iii) Potential disputes

The third central function is to resolve potential conflicts between Parties in a facilitative and non-confrontational manner. Many responses indicated that the type of conflict most anticipated would be a situation wherein one or more Parties perceive themselves to be injured by a Party that has not complied with the Convention or a related legal instrument. Several submissions acknowledged that traditional bilateral dispute resolution mechanisms are ill-suited for global environmental treaties where the repercussions of non-compliance affect many States. Some submissions commented that they did not expect the dispute settlement procedure under Article 14 of the Convention ever to be invoked. They pointed out that Parties to other multilateral environmental treaties have been reluctant to invoke traditional dispute mechanisms even when such Parties have identified the compliance of a given Party as inadequate.

(iv) Interpretation of the Convention

The fourth central function is to provide interpretation of the Convention and to clarify the obligations of the Parties. Many submissions found this to be an important function. One country stated that the process could not "issue 'authoritative' interpretations of the Convention, given the relevant provisions of the 1969 Vienna Convention on the Law of Treaties". It added that the process could assist by providing advice to a Party individually or Parties collectively on the interpretation or application of the relevant provisions of the Convention. Some submissions suggested that the various bodies and processes established under the climate change regime, for example, the subsidiary bodies, the financial mechanism, the dispute settlement procedures and annexes should be subject to an Article 13 process. A few countries thought it premature at this early stage in the development of a process to define the range of questions that would be considered appropriate.

Question 1(b). What "questions regarding the implementation of the Convention" should be covered by such a process?

7. Depending on which of the four central functions mentioned above were advanced, a variety of views regarding the phrase "questions regarding the implementation of the Convention" were provided. Some submissions suggested that the questions should be of a legal, economic, social, or technical nature in furtherance of the inquiring Party's efforts to meet its national communications' obligations and other commitments. However, one country and one NGO indicated that purely technical and scientific issues were outside the scope of the Article 13 process and should be taken up through the Subsidiary Body for Scientific and Technological Advice (SBSTA).

8. In concordance with the second and third central functions, several submissions stated that the Article 13 process should concern issues regarding the extent to which an individual Party has been, is, or will be fulfilling its commitments under the Convention or a future protocol. One country stated that if a question directly concerns all Parties, it should be discussed at an open-ended forum such as the Subsidiary Body for Implementation (SBI) or the COP. One NGO stated that for the process to apply to questions regarding the implementation of the Convention, the questions must: be considered important; be inappropriate for resolution through another article of the Convention; and have an effect on more than one Party.

Question 2. What is meant by the word "process" in Article 13? Should it be understood as a sequence of events or as a mechanism or as an institution? Could it imply all of these?

9. Several submissions viewed the term "process" as inclusive of a sequence of events, a mechanism and an institution. On the other hand, many submissions favoured an institution as the structural framework that would support the process. In this light, it was suggested that a main institution be mandated to oversee the multilateral consultative process, in addition to some responsibilities being assigned to other institutions such as the COP, the existing subsidiary bodies and the secretariat. One country thought that, in order not to duplicate functions of other Convention bodies, the process should be provided with "an additional subsidiary body of the COP". This country suggested the establishment of an ad hoc intergovernmental group of experts on legal and economic issues. At least one NGO in favour of an institutional structure pointed out that a permanent body develops an institutional memory and credibility as it handles issues in a proper manner. The submissions put forward a variety of institutional structures for the multilateral consultative process, such as the establishment of a subsidiary body of the SBI or a new subsidiary body of the COP. Others preferred that the multilateral consultative process be administered through the existing SBI without the creation of a new institution or sub-institution. At least two countries were hesitant to structure the process as an institution. One was particularly concerned with the financial burden of establishing a new body.

10. One NGO stated that, during the negotiations on the Convention, the co-chairs of Working Group II of the Intergovernmental Negotiating Committee had suggested that the COP establish an ad hoc panel responsible for resolving questions of implementation. This NGO suggested, however, that such a structure would not respond to questions in a timely fashion since it would be necessary to convene sessions of the COP in order to initiate the process. A few submissions recommended designing the Article 13 process on the basis of the Montreal Protocol and the 1994 Sulphur Protocol implementation committees, which are permanent standing bodies. One NGO suggested establishing a "clearing house panel" that would be responsible for identifying questions to be put to various expert groups.

Question 3. What principles should govern the process? Is it sufficient that the process should be simple, transparent, facilitative and non-confrontational in character?

11. Numerous submissions affirmed that the process should be simple, transparent, facilitative and non-confrontational. A few countries stated that the process should not be judicial or inquisitorial. Several countries envisaged the process as resolving tensions between Parties in a similar way to the implementation committees mentioned above.

12. A few NGOs offered qualifying considerations with regard to the aforementioned principles. For example, one suggested that, although the process should be simple at first, it should have the flexibility to grow more complex if necessary. Another NGO urged that a balance should be struck between public access to information regarding Parties' compliance and the need for Parties to communicate information that they perceive to be confidential. It pointed out that Article 12.9 anticipates that the COP may establish criteria by which Parties can designate information as confidential, thus allowing the secretariat to aggregate such information before disseminating it to Convention bodies involved in the communication and review of information. However, it stated that the process could nevertheless provide for negotiating with a Party involved in a compliance review to gain access to sensitive information in exchange for confidentiality.

13. With regard to structuring the process to be non-confrontational, a few NGOs cautioned that "non-confrontational" should not be interpreted as restricting the process from dealing with situations in which Parties disagree or in which one or more Parties perceive themselves to be injured by the non-compliance of another Party. One NGO explained that at times the process may have to be "formal, judgmental, and thus potentially confrontational". One NGO stated that the process should provide for "carrots and sticks," including a genuine function to assist those Parties which are unable to fulfil their obligations.

14. Some submissions suggested additional principles such as timeliness, meaning that the process should be "expeditious in seeking resolutions" as well as "mindful of the precautionary principle", and due representation and due process, meaning in part that all Parties involved should have the right to be heard.

15. One country and an NGO stressed that the process should be forward-looking: it should not dwell on past instances of non-compliance with the Convention or protocol, but instead on how to assist Parties achieve compliance in the future. One NGO stated that the process should be voluntary in that no Party would be required to participate.

Question 4. Is it necessary to establish such a multilateral consultative process? If so, what measures should the Conference of the Parties take for its adoption: decision of the COP? Amendment? Protocol?

16. One country stated that the Convention "imposes an obligation on Parties to consider the establishment of a multilateral consultative process: it does not oblige them to establish one". However, in this regard, many submissions supported the establishment of such a process. Several NGOs thought that the process should be established as soon as possible to help ensure that it becomes credible by enabling it to develop, inter alia, competence, legitimacy, expertise and precedents. One country conveyed its uncertainty as to whether the process needed to be established in the near future. Two countries expressed scepticism about the creation of an additional institution to carry out the process. One stated that the SBI and SBSTA have already been established in addition to the IPCC process, "which represents an independent source of assessment of, inter alia, the overall performance of the Parties." The other indicated that the SBI is capable of reviewing and resolving questions of implementation and cautioned that if the new process is established at a time when existing mechanisms are not fully operational, it could hinder the functioning of the COP and existing subsidiary bodies and thus lead to confusion.

17. A large number of submissions suggested that if a multilateral consultative process were to be established, it should be adopted by decision of the COP. An NGO cited examples of agreements in which decisions by the supreme body rather than a protocol and amendments have proved effective: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) and the International Convention for the Regulation of Whaling (Whaling Convention). A few countries advised either adopting the process by an amendment to the Convention or awaiting the adoption of a protocol. Some submissions cautioned that a disadvantage of the amendment or protocol approach was that the process would be unavailable to Parties not having accepted the amendment or ratified the protocol. One country stated that the "mechanism should have appropriate rules and regulations which should be contained in an annex ...".

Question 5. If a new mechanism or institution were to be established under Article 13, should its membership be general or restricted to specialists such as legal, economic, social or technical experts? In this context, should a roster of experts to provide advice be envisaged?

18. Most submissions suggested the establishment of either a standing committee of legal, economic, and technical experts, or of generalists having access to a roster of experts. One country stated that any "mechanism" to be established should be as small as possible to minimize costs associated with it. It also suggested the nomination of a "rapporteur" who would be responsible for consulting widely with Parties and others as appropriate on questions raised and reporting back to the appropriate Convention body. It noted that this option could prove less costly and be more responsive to Parties as well as avoiding the potential complication of selecting members to serve on a standing committee. Many submissions recommended that the process draw upon expertise from some combination of the SBI, the SBSTA, the IPCC and the Global Environment Facility, as well as other relevant Convention bodies and related intergovernmental institutions. One country suggested that the body be open-ended in the interests of transparency, given that many developing countries have limited resources for providing representatives to a committee restricted to experts and consequently would be less able to monitor its activities. One NGO suggested the establishment of small panels of experts and/or Parties to hear and discuss particular issues in a given case. These panels would "serve an advisory, not adjudicatory, function".

19. In reference to a standing committee, many submissions advised that members should be representatives from Parties, although some suggested that members serve in their individual capacities. One NGO noted that the implementation committee procedures of the Montreal Protocol and the 1994 Sulphur Protocol provide for the election of members in their capacity as Party representatives. However, another NGO pointed out that the conciliation commission established under Article 42 of the 1966 International Covenant on Civil and Political Rights is composed of experts that serve in their individual capacity.

20. Irrespective of whether members serve in their individual capacity or as government representatives, many submissions advised that members should be selected by Parties with due regard to equitable geographical distribution. Many countries stressed that Annex I and non-Annex I Parties should be given equal representation. One country stated that membership should be limited to "at least 5 but no more than 10 members nominated by Parties". Another suggested that in light of the "experience of the Implementation Committee of the Montreal Protocol, it may be better to restrict the membership to designated specialists and experts in order to make discussions productive". One country proposed two levels of membership: a general level to resolve "primary" questions, and "experts from different sectors" to analyse questions of greater importance.

21. One NGO called for unlimited and non-restrictive participation and another NGO commented that a Party that is the subject of the consultative process should have the option of adding as well as subtracting committee members. In addition, a few NGOs saw a role for

NGO representation within the process, although one NGO recognized that such an arrangement would be politically infeasible. Another NGO suggested that an NGO advisory group on implementation should be established to support the process.

Section B. Relationship of Article 13 to Convention institutions and processes

Question 6. What linkages would need to be established with other Articles of the Convention, notably, Articles 7.2(c), 8.2(c), 10, 12 and 14? (For example, are the provisions on the review process complete in themselves or is there scope for them to receive support through the process envisaged under Article 13? What is the relationship of Article 13 to Article 14? Would the process under Article 13 automatically be halted if a Party invokes Article 14?)

22. Many submissions found linkages between the multilateral consultative process and the existing institutional bodies, procedures and processes. The following summarizes the various suggested linkages between the Article 13 process and those articles of the Convention listed in question 6 above.

(i) Article 7.2(c): COP shall facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects.

23. One country suggested that the multilateral consultative process should interpret how the COP would facilitate, at the request of two or more Parties, the coordination of measures to address climate change and its effects. Many submissions assumed that the Article 13 process, with functions that might include providing technical assistance, interpretation of obligations, and recommendations to achieve compliance, would effectively be a coordination of measures between Parties to address climate change. Thus, many countries and NGOs responded to this portion of question 6 by describing the role of the COP in the Article 13 process.

24. Several submissions stated that the committee, institution or body that is established to implement the Article 13 process would provide recommendations that would ultimately be presented to the COP for adoption. Such recommendations could include actions to be carried out by Parties that are called before the process; the COP; or other institutions such as the financial mechanism. Other submissions suggested that the committee's consultations should be finalized without having to be adopted by the COP. In this case, the COP would be presented with a report of the Committee's activities. A few countries suggested that the COP should be able to pose questions directly to the Article 13 mechanism.

(ii) Article 8.2(c): The secretariat shall facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information ...

25. Many submissions stated that the compilation and communication of information in promotion of the implementation of the Convention could be considered as falling within the responsibility of the Article 13 process, although one country found no such correlation.

26. Many submissions envisaged the secretariat cooperating closely with the multilateral consultative process by providing technical, administrative and meeting support. One country voiced its concern that such a relationship would be a financial burden on the secretariat, whereas another country proposed that the Article 13 process would provide technical assistance to the secretariat. Some submissions argued that the secretariat should be able to put questions to the Article 13 mechanism and that the answers garnered would provide useful information for all Parties.

27. One NGO envisaged the secretariat forming linkages with an Article 13 process to carry out mutual responsibilities in resolving problems relating to national communications. In this regard, both the secretariat and the Article 13 process would be in a position to identify those Parties requiring assistance to the COP, the financial mechanism, and other bodies. A few NGOs suggested that, in the context of the Article 13 process and the in-depth review process, the secretariat, a Party and the COP should be able to invoke the Article 13 process when a Party's communication reveals that it has not met its obligations. In this context, one NGO indicated that the secretariats under both the Montreal Protocol and the Second Sulphur Protocol have the power to initiate non-compliance proceedings. This NGO suggested that the United Nations Framework Convention on Climate Change secretariat's "limited role" of compiling and transmitting reports and facilitating assistance to those Parties preparing communications, would need to be broadened.

(iii) Article 10: A subsidiary body for implementation is hereby established to assist the COP in the assessment and review of the effective implementation of the Convention.

28. Submissions enumerated a variety of potential linkages between the Article 13 process and the SBI. First, many favoured the SBI as the main body that would be responsible for the multilateral consultative process. One country stated that the SBI would be the "guardian" of the Article 13 process. One NGO noted, however, that although such an arrangement would promote transparency, the assessment of an individual Party's compliance is likely to prove impossible in the political atmosphere of the SBI. Several submissions recommended the establishment of a standing committee under the SBI to give effect to Article 13. One NGO stated that in this regard it would be necessary to decide whether such a standing committee should report to the SBI or directly to the COP. One NGO stated that a standing committee should probably report to the COP: "alongside the SBI and independently of it".

29. One country suggested that members of an Article 13 body be appointed by the SBI. Alternatively, another country suggested that an Article 13 standing committee should serve as the executive institution of the SBI. In addition, a number of countries viewed the Article 13 mechanism as assisting or providing support to the SBI.

30. One NGO predicted that the main business of the multilateral consultative process would emerge from the national communications overseen by the SBI. Another NGO distinguished the roles of the Article 13 process and the SBI by explaining that the SBI would be responsible for assessing the overall implementation of the Convention, whereas the Article 13 process would be more concerned with the compliance record of individual Parties.

(iv) Article 12: Communication of information related to implementation

31. Numerous inputs foresaw strong links between the multilateral consultative process and the communication and review process. Some endorsed Parties requesting guidance through the Article 13 machinery on how to properly meet Article 12 obligations. A number of submissions stressed that the Article 13 process should be available to respond to questions of implementation generated by the in-depth reviews of national communications. One country noted that, under Article 12, paragraph 6, information communicated by Parties is to be transmitted by the secretariat to any concerned subsidiary body. Thus, a standing committee carrying out the functions of the multilateral consultative process would already possess the information necessary to determine whether a particular Party was in compliance with the Convention.

32. Some countries identified linkages between the communication process and the Article 13 process in slightly different ways. For example, one country foresaw the multilateral consultative process as providing interpretations or finding solutions to questions of general interest to Parties that arise as a result of the national communications. Another country perceived the Article 13 process as providing an opportunity for Parties to discuss their implementation of the Convention, thereby advancing the communication objectives of Article 12. Moreover, one country recommended that the multilateral consultative process be requested to compile a database of legal and technical information derived from the inventories and descriptions of climate change mitigation efforts provided in national communications. On the other hand, one country saw Article 7.2(e), the SBI, and decisions 2/CP.1 and 6/CP.1 as already providing a "mechanism for reviewing and resolving questions relating to implementation under the Convention". It advised that the existing mechanisms should "accumulate the necessary experience" and that only subsequently would it be "opportune to consider whether it is necessary to set up any new procedure, or ... to improve and perfect the existing mechanisms ..."

(v) Article 14: Settlement of disputes

33. Several submissions expressed doubt that the traditional dispute settlement procedures under Article 14 of the Convention would ever be invoked. In this regard, they emphasized that in a multilateral setting where non-compliance has consequences for the entire constituency of States, there is often no one Party in a position to initiate a traditional dispute settlement procedure. A few submissions argued that given the above-mentioned drawbacks, the establishment of a non-confrontational and facilitative multilateral consultative process to foster implementation was necessary.

34. Most submissions were divided on how the Article 13 and Article 14 processes might overlap and interact. Some ventured that, if a Party continued to fall short of compliance after Article 13 efforts to encourage implementation had been exhausted, Article 14 should be invoked. Once dispute settlement procedures have been invoked, many submissions recommended the automatic termination or suspension of the Article 13 process. One country stated that this would "recognize the primacy of Article 14 ..." Conversely, a few submissions supported the continuation of the consultative and facilitative services of Article 13, arguing that this type of process was more likely to generate agreement and to lead to a satisfactory solution for all involved. One country mentioned that the negotiators of the non-compliance procedures of the Montreal Protocol and the Second Sulphur Protocol found it difficult to "identify what, if any, priority ought to be attributed to the two regimes". This country recommended that "the Montreal and Sulphur precedents" should, when designing this aspect of the multilateral consultative process, be given careful consideration.

35. In the view of one country, the Article 13 process may be considered as part of Article 14, since Article 14, paragraph 1, requests that Parties first seek to settle disputes "through negotiation or any other peaceful means of their own choice." This country further stated that as Article 14, paragraphs 6 and 7, refer to a conciliation commission available to Parties within a dispute, such a commission, once its procedures are defined by the COP in an annex to the Convention, could be considered as falling within the purview of the multilateral consultative process. One NGO stated that a conciliation commission and an Article 13 process would not "appear to be mutually exclusive".

36. Other inputs from countries described the differences between Article 13 and Article 14 in the following ways:

(a) Article 13 is a process to avoid disputes whereas Article 14 is a process to settle disputes;

(b) The Article 13 process is forward-looking and the Article 14 process is backward-looking;

(c) The Article 13 process, unlike the Article 14 process, is available to provide guidance and interpretation in situations that do not necessarily presume a failure to comply or a dispute;

(d) The Article 13 process could "serve as a waiting room to the solution of the controversy by providing greater precision about the scope of any particular norm or situation, thus avoiding a controversy between Parties."

Question 7. Is there a gap between the processes on review of implementation and on settlement of disputes? If so, what is the extent of that gap and how could Article 13 contribute to narrowing it?

37. Many submissions perceived a gap between the review process and the settlement of disputes procedures, and offered a variety of ways in which an Article 13 process could fill the gap. Firstly, some countries explained that the in-depth reviews of national communications will generate questions of an interpretive or technical nature. Currently, they stated, there is no mechanism from which to obtain definitive answers to questions relevant to implementation outside the dispute settlement procedures under Article 14. This they found to be problematic since important questions may not be confrontational or may pertain to all Parties to the Convention. Furthermore, for those potentially confrontational questions dealing with the non-compliance of a Party, a facilitative and assistance-providing process would be better suited to the climate change regime than a judicial proceeding. One NGO identified the "obvious gap" as being the fact that the implementation review does not deal with the individual implementation of Parties and lacks a procedure to handle non-compliance.

38. One NGO described the multilateral consultative process as an opportunity for focused discussions on questions relevant to implementation outside a confrontational and bilateral setting. Another NGO underlined the difficulty of examining implementation in a routine and systematic manner in large, open-ended bodies such as the COP, the SBI or the SBSTA. A third NGO stressed that some concerns regarding the reliability of emissions estimates or the efficiency of climate change mitigation policies can be answered through the in-depth review process, and that as the Convention develops and commitments become more "stringent and difficult to meet", "potentially more contentious" issues such as the "efficacy of certain policies and measures in achieving particular emission stabilization or reduction objectives" could prove disruptive to the review process.

39. Several submissions advised that Parties should be able to turn to the Article 13 process for interpretation or guidance outside the in-depth review context. In addition, they stressed that although Article 14 is available, such questions were not suited to its provisions.

40. One country and one NGO found no gap between the review process and the settlement of disputes procedures. The NGO added that both the COP and the SBI have the capacity to hold informal, non-confrontational consultations on questions regarding implementation, including disputes concerning the interpretation or application of the Convention.

Question 8. Is there a relationship between the Article 13 process and the subsidiary bodies established under the Convention, for example, the AGBM?

41. Many submissions envisaged various possible relationships between an Article 13 process and the SBI, SBSTA and AGBM, as elaborated below.

(i) The Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice

42. As in the case of responses to question 6, many submissions saw the SBI as playing a central role in a multilateral consultative process. Several proposed the establishment of a standing committee under the SBI to give effect to Article 13. A few submissions suggested that the SBI be given the mandate to respond to questions of implementation falling within the purview of Article 13, while others endorsed the creation of a new subsidiary body. One country proposed that the Article 13 process function as a small and focused "supreme body" of the SBI. Another commented that if a new subsidiary body is created, its functions should be carefully designed so as not to overlap with those of the existing subsidiary bodies.

43. Several NGOs allocated the responsibility for general matters of implementation and the assessment of overall progress to the SBI, and that of providing a forum for consideration of both technical questions and non-compliance issues pertaining to individual Parties, to the Article 13 process. In this context, one NGO thought it unlikely that either the SBI or the SBSTA could consider issues of individual Parties' implementation with the necessary detail and attention. Accordingly, this NGO supported the establishment of a separate subsidiary body for the Article 13 process. Conversely, some countries and NGOs clearly disapproved of the creation of new subsidiary bodies, with several citing budgetary constraints and one country arguing that their creation would slow progress.

44. One country explained that the primary function of the SBI and the SBSTA was to deal with questions posed by the COP, whereas the Article 13 process should be designed to deal with questions posed by Parties. Other countries, as well as several NGOs, stressed that the process should be available for the purpose of answering questions posed by the SBI and the SBSTA.

45. One NGO suggested that the Article 13 process be part of both the SBI and the SBSTA. It proposed the creation of ad hoc committees which would draw on experts in the SBI or the SBSTA, depending on the issue to be considered. These ad hoc committees would handle questions raised by Parties concerning the implementation of the Convention or of a future protocol. They would investigate questions and, following careful consideration, propose solutions that would form the basis for further deliberations by either the SBI or the SBSTA.

(ii) Ad Hoc Group on the Berlin Mandate

46. Many submissions viewed the relationship between the multilateral consultative process and the AGBM as indirect, albeit important. Some acknowledged that if additional commitments were adopted in a protocol, the implementation thereof would fall under the purview of an Article 13 process. One country advised that the Article 13 process should be designed concurrently or prior to the AGBM negotiations on recommendations for climate change mitigation policies and measures and quantified emissions limitations and reductions. It was suggested that this could aid Parties in formulating their positions, thus making these negotiations more fruitful and target oriented.

47. A few countries mentioned that the AGBM is addressing issues similar to those that would be considered by an Article 13 process, including the strengthening of commitments in Article 4.2(a) and (b) for Annex I Parties and the exchange of experience on national activities, particularly those identified in Parties' communications. Accordingly, one country suggested that a protocol should have recourse to a multilateral consultative process. In this regard, one NGO suggested that the text of a protocol make specific reference to the multilateral consultative process for the resolution of questions pertaining to new commitments. Another predicted that once a protocol is adopted, the Article 13 process could be strengthened to respond to more stringent obligations. In this regard, one NGO suggested leaving the consideration of a "non-compliance procedure for a future protocol to the legal experts of the Parties to this instrument". However, one NGO found it preferable for provisions relating to an Article 13 process and a protocol to be developed through the Convention.

Section C. Legal and procedural considerations

Question 9. What is the legal status of the process?

48. Of those submissions that referred to the nature of the process or institution, one country disapproved of the establishment of a new institution and suggested that the legal status conferred upon an Article 13 mechanism should be akin to one of "facilitator, comprehensive observer, and solution provider". One NGO expressed the view that the legal

status of an Article 13 process would have parity with other subsidiary bodies established under the Convention.

49. Some submissions queried whether the Article 13 process would be obligatory and whether its decisions would be binding on Parties. Obligatory: Several submissions endorsed an optional process. A few countries argued that if the COP adopts the Article 13 process, it should be considered as compulsory. However, one country stated that although "a decision of the Parties could establish the process quickly by consensus ... , (it) is not considered legally binding on Parties". This being the case, it felt that Parties would still be expected to cooperate therewith. Binding decisions: Many submissions stressed that the process would not be vested with formal decision-making power. Instead, it would provide non-binding recommendations to Parties or would make proposals for remittance to the COP for consideration and possible adoption. One country argued that, although it would not be mandatory to resort to "this mechanism, once this is done its decisions must be respected".

Question 10. What is meant by the Article 13 phrase: "Parties on their request"? Who may trigger the process apart from the Parties themselves? Is this process compulsory or optional?

50. Responses offered a variety of interpretations of the phrase, "Parties on their request." Many thought it clear that Parties could invoke the multilateral consultative process. However, it was less clear in what manner or via which bodies Parties could pose questions relating to implementation. Numerous submissions proposed that Parties could individually or collectively invoke the process when in need of interpretation or assistance in meeting obligations under the Convention. Some envisaged a Party possibly availing itself of the process in order to signal its difficulty in fulfilling its commitments under the Convention or a future protocol. One NGO stated that the above-mentioned phrase should enable "Parties ... to initiate the non-compliance procedure with or without the consent of the Party or Parties concerned". One NGO stated that much of the useful work done under an Article 13 process might occur without formal triggering as is the case with the Montreal Protocol.

51. Many submissions agreed that Parties could also invoke the process when concerned about another Party's progress in implementing the Convention. In this regard, one NGO indicated that Parties to the Montreal Protocol and Second Sulphur Protocol have found it appropriate to allow the triggering of the compliance procedures therein by Parties concerned with another Party's implementation progress. However, one NGO urged that to avoid confrontation, Parties should only raise questions about their own compliance.

52. In addition to the direct triggering by Parties, the submissions suggested a number of different avenues for invoking an Article 13 process:

(a) Several thought that the COP, by consensus, should be able to initiate the process during its sessions;

(b) One country suggested that if a problem appropriate for resolution by Article 13 arises in the interim between COP sessions and it is not possible to convene an extraordinary session of the COP, the COP Bureau should be able to invoke the process;

(c) Several suggested that the Convention bodies, such as the SBI and the SBSTA, should be able to invoke the process;

(d) Several ventured that the secretariat should be able to raise questions of implementation, although others explicitly rejected this option. One country stated that if the secretariat triggered the process, a Party should be allowed "a right of objection ... at the SBI level".

53. A few submissions proposed that the body assigned to oversee the Article 13 process be empowered to trigger the process. Many commented that the subsidiary bodies and the Parties would be able to identify questions regarding implementation that would emerge from the findings of the in-depth reviews of national communications.

54. Several NGOs queried whether States or organizations not party to the Convention could trigger the Article 13 process, although almost all concluded that neither non-governmental nor intergovernmental organizations would be permitted to do so. One NGO submission did point out, however, that non-party States, NGOs and IGOs may have access to information or expertise that could prove valuable in resolving questions regarding implementation. As a result, it recommended that interested non-party States and institutions should be allowed to observe the process and submit relevant information. It further added that, under the Montreal Protocol and Sulphur Protocol, NGOs, although not permitted to raise questions regarding implementation directly, may submit information to the respective secretariats about possible non-compliance which in turn may be forwarded to the implementation committees. One NGO pointed out that the secretariat would be in an advantageous "position to receive information from non-governmental sources ..." It indicated, as an example, the European Community, stating that the "European Commission receives most of its information from concerned citizens".

55. Many submissions stressed that an Article 13 process should be optional. Even so, one NGO commented that nearly all Parties invited to appear before the Montreal Protocol Implementation Committee regarding their compliance, do indeed attend the proceedings.

Question 11. Should the multilateral consultative process be made to apply to related legal instruments in addition to the Convention?

56. Most submissions supported establishing a process that would apply to related legal instruments under the Convention (unless the legal instrument provided for a separate procedure). One country found it inefficient to establish a separate multilateral consultative process in a future protocol. It expressed concern that if the protocol was to be limited to

Annex I countries, developing country Parties could find themselves unable to participate in the protocol's implementation mechanism. However, one country disagreed that the Article 13 process should be applied to related legal instruments.

57. Some submissions preferred to wait until the provisions of a future protocol were specified before determining whether the Article 13 process would be appropriate. One NGO stressed that more precise emission restrictions would require a more sophisticated and demanding compliance system. This NGO acknowledged that Parties to other international environmental agreements have been effective in strengthening their compliance process as commitments increased.

Section D. Other issues

Question 12. Under this section Parties and contributors are invited to make any additional inputs that they consider relevant to the consideration of a multilateral consultative process and its design.

58. One country indicated that the sessions of the Ad Hoc Group on Article 13 and the AGBM should not overlap.

59. One country and an NGO stated that the multilateral consultative process, if adopted, should be "a cooperative approach to problem solving" and not a "non-compliance" or "enforcement process". One NGO recommended that the process could be adopted after several years of operation on an interim basis.

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